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ABSTRACT

The widespread introduction of microcomputers in higher education has had an impact on a variety of issues within the university community. One of the most important issues has to do with what constitutes intellectual property and who owns this property. Most universities have established a patent policy as there have long been financial rewards associated with patents. However, faculty development of software (which usually falls under copyright rather than patent law) is forcing a modification to existing models, in part due to the potential economic gain involved, and partly because of the extent of institutional resources that may go into a software product. This paper discusses some of the basic issues that had to be addressed in the development of a copyright policy at Drexel University, and presents the latest draft of that policy as a sample that may be used by others in drawing up their own policies. Among the issues addressed are definitions, copyright policy objectives, ownership of the copyright, royalty distribution, and administration of the copyright policy. (THC)

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Copyright Policy

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Copyright Policy

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The widespread introduction of microcomputers in higher education has had an impact on a variety of issues within the university community. One of the most important of these has to do with what constitutes intellectual property and who owns this property.

Most universities in this country have an established patent policy, as there have long been financial rewards associated with patents. On the other hand, most universities do not have copyright policies. The traditional wisdom at universities has been that the authorship of materials belongs to the faculty author; hence the university made no claim on textbooks, journal articles, and other forms of expression.

Faculty development of software (which usually falls under copyright, rather than patent, law) is forcing a modification of this model, in part due to the potential economic gain involved, and partly because of the extent of institutional resources that may go into a software product. In the case of a textbook, it is quite likely that an author could develop the entire manuscript with few, if any, university resources applied to the project. The use of the library or secretarial assistance would be so minor as not to warrant a university claim on this intellectual property. Software development, on the other hand, may consume enormous amounts of university resources, such as programmers and computer time.

Universities, therefore, need to define carefully under what circumstances they have a right to claim some portion of the royalties, authorship, and/or ownership of copyrighted materials. There are many complex issues associated with copyright law and computer law that are too extensive to go into in this document. The purpose of this paper is rather to discuss some of the basic issues that had to be addressed in the development of a copyright policy at Drexel University, and then to present the latest draft of that policy as a sample that may be used by others in drawing up their own.

Before going further it is important to understand a distinction which is made in this policy and probably should be made at most academic institutions. This distinction is between ownership of the copyright and royalty distributions emanating from that copyright. Traditionally, a textbook or other scholarly work is an entity which is owned by the author, and the royalty distributions accrue to that author. Because of the unique circumstances surrounding software development, it is important to consider these two factors separately.

Let us first consider the issue of ownership of the copyright. In the case of software, there needs to be a potential for on-going support of that software, modification of source code, upgrade or documentation and various other enhancements. Furthermore, derivative works might be appropriate and/or necessary. The stability of an institution acting as owner creates a more appropriate entity to handle these follow-on activities. A company that purchases or licenses software from a university wants to be able to deal with a single entity and wants to have some guarantee of the willingness of that entity to support the product which they have licensed. Faculty members may move from one institution to another, thus creating an unusual and perhaps untenable economic environment for the purchaser. For these reasons, the decision was made at Drexel University to make the University the owner of the copyright in all situtations in which the University invested substantially.

Another issue to be considered is that of royalty distribution. Although the copyright policy at Drexel covers forms of expression other than software, the impetus for creating such a policy clearly stemmed from the heavy commitment from both the faculty and the institution to develop educational software. Part of the consideration in developing this policy was the recognition that incentives needed to be present to encourage faculty software development efforts. A faculty member's involvement in software development is not likely to count heavily in the traditional criteria that lead to tenure and promotion. If the traditional values at most universities continue to be held, namely that scholarly research is the primary factor in the academic reward structure, then alternative reward structures will be necessary to facilitate software development. For this reason, the issue of royalty distribution is critical. Even in those cases in which the University makes a substantial commitment, the developers of this intellectual property receive sixty percent of the net proceeds. This is an aggressive approach that is intended to create real partnerships within the institution.

The attached policy statement reflects one formulation in dealing with copyrighted materials in the University. Hopefully this document will encourage discussion of similar issues at other institutions.

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DREXEL UNIVERSITY COPYRIGHT POLICY

Revised November 21, 1985

I. GENERAL POLICY STATEMENT

It is the general policy of Drexel University to encourage its faculty, staff and students to write research papers and books, to produce artistic works, instructional material and computer software, and to create other scholary works. Dissemination of such works of authorship contribute to the professional development and advancement of University personnel, the creators of such works; enhance the reputation of the University; benefit the academic programs of the University; and add to the body of knowledge for the good of society. Recognizing the potential commercial value of such original works of authorship when fixed in any medium of expression, and for which statuatory copyright protection exists, it is important that policy guidelines be established by the University to define and protect the respective rights and obligations of the University, its personnel and sponsors of scholarly pursuits relative to copyrightable material produced at or for the University, and to do so while preserving traditional University practices and privileges with respect to the publication of scholarly, instructional and artistic works.

II. COPYRIGHT POLICY OBJECTIVES

The principal objectives of the University Copyright Policy are:

1. to encourage the creation and production of scholarly works by the faculty, students and staff of the University;

2. to protect the rights in copyright of material created by University faculty, students and staff;

3. to facilitate the early and most productive dissemination of such creative works produced by the University personnel;

4. to establish guiding principles for determining the rights of ownership of copyrightable material produced by the faculty students and staff of the University at or for the University;

5. to recognize and reward the creative efforts of faculty, students and staff of the University through the realization of tangible benefits from royalties generated by works copyrighted by the

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University; and

6. to afford faculty, students and staff of the University the opportunity to further their scholarly objectives, and that of the University, by disseminating the results of their work to provide maximum benefit to the public, while safeguarding the rights in copyright for the University, author(s) and sponsor(s)

III. DEFINITIONS

A. Under the Copyright Act of 1976, 17 U.S.C. section 101 *et seq.*, federal statuatory copyright exists in "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." Such works include but not limited to the following:

1. Written or printed works such as books, journal articles, poems, manuals, tests, memoranda, syllabi, bibliographies, computer programs, computer-driven displays, programmed instructional material (courseware), simulations and databases;

2. Musical works, including any accompanying words;

3. Dramatic works, including accompanying music;

4. Lectures, presentations and live video or audio broadcasts;

5. Choreographic works, including pantomimes, if such works are fixed in notation or on videotape;

6. Pictorial, graphic and scultpural works including photographs, diagrams, sketches and architectectural plans;

7. Films, filmstrips, charts, transparencies and other visual aids;

8. Motion pictures and other audio visual works such as videotapes, audio tapes, videodiscs and cassettes; and

9. Sound recordings;

B. A "derivative work" is a work based upon one or more preexisting

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works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work."

C. Copyright protection does not extend to any idea, process, concept, discovery or the like, but entends only to the expression in which it is embodied, illustrated or explained, which constitutes the work.

IV. POLICY STATEMENT

A. The University encourages its faculty, students and staff to write textbooks, to produce instructional materials, and to create other scholarly works. It is the policy of the University that all rights in copyright remain with the creator of such a work except where (1) the work is created in association with a sponsored research or other program activity, (2) the work is created "within the scope of employment," (3) the work is commissioned by the University, (4) the work is created with significant use of University resources, or (5) the work is created pursuant to a written agreement executed prior to the creation of the work. The University makes no claim to ownership of copyright to books, journal articles and other scholary works traditionally produced for the purpose of information exchange and the dissemination of knowledge and scholarly research.

B. All works created or developed by University faculty, students or staff with support from an outside sponsor shall be governed by the provisions covering copyright ownership in the sponsorship agreement, grant or contract. In the absence of such terms, the ownership of copyright in such work shall be determined by reference to paragraphs C, D and E of this section.

C. The Copyright Act of 1976 provides that all "works made for hire" are the property of the employer - the University - and that the employer: (1) is considered the author of such works, and (2) is the owner of the associated copyright unless both the employer and the employee have signed a written agreement specifying otherwise. A "work made for hire" is a work created or developed by University faculty, staff or other employee within the scope of

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his or her employment, or a work specially ordered or commissioned for use as a contribution to a collective work.

D. It is the policy of the University that works created or developed by any person, including, but not limited to, faculty, students and staff, with significant use of funds, facilities, space, equipment, materials or other resources of, or administered by, the University shall be the property of the University. The University is considered the author of such works, and is the owner of the associated copyright unless both the University and the authors of the work have signed a written agreement specifying otherwise.

1. Significant University support and/or resources shall include, but is not limited to:

   a. direct support with University funds for a specific project, e.g. a "commissioned work;"

   b. use of University owned or leased computer facilities, and/or associated equipment;

   c. use of University release time for a specific project, task, or a "commissioned work;"

   d. use of prior University developments as part of a "derivative work;"

   e. use of and/or the assistance of one or more University faculty, programmers, or equivalent support staff who are assigned to a project specifically to assist in the creation of a work.

2. It is the duty of all faculty, students, or staff to disclose in good faith writing to the Vice President for Research, in sufficient detail to enable a thorough review and evaluation, any copyrightable material having potential commercial value not excluded in paragraph IVA generated in whole or in part during the term of their employment or attendance at the University. Such disclosure shall be made within a reasonable time following authorship of the copyrightable material. Notwithstanding the above, material generated solely for the purpose of classroom instruction within Drexel University or for a student assignment in a University course need not be

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disclosed if this material is not used for any purpose other than instruction at Drexel University. It shall be a further obligation of all authors and the University to maintain the confidentiality of any material disclosed.

3. In routine cases where the authors and the Vice President for Research agree to the classification of rights and equities, royalties will be allocated in keeping with the guidelines set forth in paragraph V. All disputed cases shall be referred to the Intellectual Property Committee with respect to classification of rights and equities before decision by the Vice President for Research, or the arbitration panel.

4. As owner of the copyright, the University shall have all the rights of copyright ownership provided by statute. These rights include, but are not limited to the following:

   a. the exclusive right to reproduce the copyrighted work;

   b. the exclusive right to prepare derivative works based on the copyrighted work;

   c. the exclusive right to distribute copies of the copyrighted work by sale or otherwise, e.g. license, rental, lease or lending;

   d. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform and/or display the copyrighted work publicly;

   e. to distribute the copyrighted work to its faculty, students and staff for internal use in its instructional programs.

   f. the University shall in good faith advise the author(s) of any licensing, rental, or other business arrangements concerning the copyrightable material and will from time to time seek the author's adivce on such matters as it sees fit. However, the University shall have the final decision in any such business arrangements.

E. Copyright ownership in any work, other than in a thesis, which is not within the provisions of paragraphs B, C and D of this section

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shall reside with the author(s). In the case of a thesis generated by research performed in whole or in part by a student in the course of or pursuant to a sponsored research agreement or other written agreement, including an agreement between an author(s) and the University, or using equipment or facilities made available to the University under conditions that impose copyright restrictions, ownership of copyright or control shall be determined in accordance with such agreement or restrictions. In the absence of such agreement or restrictions, copyright ownership in such a thesis shall reside with the student. However, the University shall retain a royalty-free right to reproduce and publicly distribute copies of the thesis for limited and noncommercial purposes.

F. To secure to the University ownership of copyright in accordance with paragraphs A, B, C and D of this section, and the rights of reproduction and distribution in accordance with paragraph F of this section, all faculty, staff, employees, students, consultants and others authorizing works for or producing works on behalf of the University shall assign such person's rights of copyright, or grant the specified rights of reproduction and distribution, to the University. Reproduction and distribution of copyrighted works for internal use by the University shall be made with the understanding that such works are proprietary and shall not be reproduced, copied, leased or sold commercially. The University shall make all reasonable effort to assure this protection, such as copy-protecting computer software, videotapes, etc...

V. DISTRIBUTION OF INCOME

A. In the case of works in which the University has acquired rights of copyright ownership under paragraphs A, B, C, D, E and F of Section IV, revenues received by the University through fees, royalties or other considerations for the use of such works as a commercial property will be shared with the author(s) of such such works in accordance with the following schedule:

For the first $500,000 in cumulative net income:

60% to author(s)
20% to Vice President for Research
20% to author's Academic Unit

For the next $1,000,000 in cumulative net income:

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40% to author(s)
35% to Vice President for Research
25% to author's Academic Unit

For cumulative net income in excess of $1,500,000
20% to author(s)
50% to Vice President for Research
30% to author's Academic Unit

For the purposes of this policy, net income is defined as the gross income generated by the sale, licensing, or distribution of the work, less out-of-pocket expenses incurred by the University for (1) the sale or licensing the copyrightable work and for the collection of royalties, (2) for production, development, maintenance and distribution of the work, but not including the original investment on development and (3) for litigation and other actions in enforcing or defending the copyright.

For the purposes of this section, the term Academic Unit shall include, without limitation, college, department, administrative unit, group or institute, functions of which are separately budgeted. If the authors are associated with different units, the royalty distribution shall be divided equally to the units, unless the University is provided with an alternative royalty distribution schedule agreed upon by the heads of the respective units and the Vice President for Research or his or her designee. In the event a unit ceases to exist, the distribution of the unit's funds shall be determined by the Vice President for Research or his or her designee.

All distribution of income to faculty, staff, and students is for life and assignable upon death.

B. Authors of copyrightable works may be faculty, students, staff, consultants and other employees of the University, or any combination thereof. When more than one author is involved, the responsibility for determining the relative royalty distribution among the authors rests solely with the authors. Unless the authors provide the University with an alternative royalty distribution schedule agreed upon by them, royalty distribution shall be divided equally between the authors. In any event, the University assumes no responsibility or liability in disputes among authors concerning the sharing of royalties among the authors.

C. In the case of a derivative work, developed at or for the University, and based on another University author's intellectual property, the

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University authors must negotiate an acceptable arrangement for royalty sharing with the author(s) of the original work.

VI. ADMINISTRATION

A. The Vice President for Research shall be responsible for the administration of the Drexel University Copyright Policy.

B. A University Committee on Intellectual Property shall make recommendations to the Vice President for Research on all matters regarding University intellectual property.

1. The University Committee on Intellectual Property shall consist of two (2) members appointed by the Faculty Council, one (1) member appointed by the Vice President for Academic Affairs, one (1) member appointed by the Vice President for Research, and one (1) member appointed by the President. The Chairman of the Committee shall be appointed from this group by the President .

2. Members of the University Intellectual Property Committee shall serve for no more than two successive terms of two years each. The members appointed by the Faculty Council shall be appointed in alternate years; the member appointed by the Vice President for Academic Affairs shall be appointed in an odd-numbered year; while, the member appointed by the Vice President for Research shall be appointed in an even-numbered year. The Chairperson of the Committee shall serve at the pleasure of the President.

3. The University Intellectual Property Committee shall make recommendations to the Vice President for Research, as requested, on rulings regarding the determination of substantial University support and/or resources in the development of creative works by University authors.

4. Appeals and disputes shall be forwarded in writing to the Vice President for Research through the Intellectual Property Committee.

5. Appeals from the Vice President for Research's rulings shall be made within 30 days of that ruling to an arbitration panel comprising three members. That panel shall consist of one

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member from the American Arbitration Association (AAA) to be mutually agreed on by both parties in accordance with the rules of the AAA. The other members shall be selected by the opposing parties, and shall be compensated at the rate of $150 per day, such payment to be made from the profits of the copyrightable material. The AAA member's fee shall be shared equally by the University and the author(s). The University shall grant appropriate release time to the other members as necessary. Witness fees or compensation shall be paid by the party calling the witness.

The AAA member shall have the sole authority to determine the issues involved. A two-thirds vote on any issue shall be sufficient to constitute a resolution of that issue. The arbitration panel's authority shall not add to or modify this Policy. The award of the arbitration panel shall be made in writing and need not present the panel's vote on each issue, but merely the resolution of each issue. This award shall be final and shall be binding on all the parties. The award may be enforced by a court having jurisdiction over the parties.

C. No assignment of rights, transfer of ownership, license or other arrangements concerning the disposition of University owned copyrights may be entered into except by authorized officials of the University.

D. All creative works covered by this policy must have the copright notice properly affixed to the works. In those cases where Drexel University is the copyright owner, all copies and reproductions of the the copyrighted work shall clearly display:

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